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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CLIFTON LIND and JEFFERSON C. LIND

Appeal 2008-1405
Application 10/624,279
Technology Center 3700

Decided: January 22, 2009

Before: WILLIAM F. PATE, III, JENNIFER D. BAHR, and STEVEN D.A.
McCARTHY, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Clifton Lind and Jefferson C. Lind (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 2, 4-6, 9-14, 16-21, 23, 26, and 27, which are all of the claims pending in the application. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellants' claimed invention is directed to gaming machines that incorporate a video display and to systems including a number of such gaming machines. Specification 1:11-12. Claims 1, 14, and 16, reproduced below, are further illustrative of the invention.

1. A gaming machine including:

(a) a cabinet;

(b) a game video display located at a front side of the cabinet;

(c) a first additional video display located at the front side of the cabinet above the game video display, the first additional video display extending substantially the entire width of a front side of the gaming machine;

(d) a player control touch screen display located below the game video display at the front side of the cabinet and extending substantially the entire width of the front side of the gaming machine, the player control touch screen display forming a portion of a forwardly projecting ledge located below the game video display and extending transversely to a plane of the game video display; and

(e) a second additional video display located at the front side of the cabinet below the player control touch screen display, the second additional video display extending substantially the entire width of the front side of the gaming machine in an area below the player control touch screen display.

14. A method of making a game presentation at a gaming machine, the method including:

(a) displaying a first game presentation component on a first video display located at a front side of the gaming machine, the first game presentation component comprising a first portion of a first game presentation;

(b) simultaneously with displaying the first game presentation component, displaying a second game presentation component on a second video display located at the front side of the gaming machine below the first video display, the second game presentation component comprising a second portion of the first game presentation;

(c) simultaneously with displaying the first game presentation component, displaying a third game presentation component on a third video display located at the front side of the gaming machine below the second video display and forming a portion of a ledge extending from a plane of the second video display, the third game presentation component comprising a third portion of the first game presentation; and

(d) simultaneously with displaying the first game presentation component, displaying a fourth game presentation component on a fourth video display located at the front side of the gaming machine below the third video display, the first, second, third, and fourth game presentation components combining to produce the first game presentation.

16. A method of controlling a gaming machine, the method including:

(a) displaying a first game presentation through a series of four video displays located at a front side of the gaming machine in columnar fashion, each respective video display showing a

respective portion of the first game presentation and extending across substantially the entire width of the front side of the gaming machine;

(b) producing a presentation switching instruction at least partially based on the utilization of additional gaming machines included in a gaming system in which the gaming machine is included, the additional gaming machines each providing a second game presentation; and

(c) in response to the presentation switching instruction, displaying the second game presentation through the video displays located at the front side of the gaming machine, each respective video display showing a respective portion of the second game presentation.

The Rejections

Appellants seek review of the Examiner's rejections of claims 5 and 27 under 35 U.S.C. § 112, second paragraph, as being indefinite and claims 1, 2, 4-6, 9-14, 16-21, 23, 26, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Morrow (US 2003/0064771 A1) and Alcorn (US 6,620,047 B1).

SUMMARY OF DECISION

We AFFIRM.

ISSUES

The Examiner's position in rejecting claims 5 and 27 under 35 U.S.C. § 112, second paragraph, is that the recitation of one or more player interface mounted in an area "removed" from the forwardly projecting ledge is

misdescriptive of Appellant's disclosed invention and thus vague and indefinite. Answer 3 and 8. According to the Examiner, the player interface devices 19 and 20 appear to be integrated with the ledge 16, not "removed" or remote from it. Answer 8. Appellants, on the other hand, urge that the claim language in question simply means that at least one player interface device is positioned in some area on the front of the gaming machine other than the forwardly projecting edge, and thus is consistent with Appellants' underlying disclosure. Appeal Br. 7.

Appellants point out that Morrow does not teach a touch screen display on the forwardly projecting ledge and that Alcorn teaches only mechanical buttons 40 on the forwardly projecting ledge below display 16. Appeal Br. 8 and 9. Consequently, according to Appellants, the combined teachings of Morrow and Alcorn would not have suggested a touch screen display on a forwardly projecting ledge of a gaming machine. Appeal Br. 8 and 12. The Examiner's position, in essence, is that it would have been obvious in view of the combined teachings of Morrow and Alcorn to provide a touch screen controller on the slant-top (or outwardly projecting ledge) of a gaming machine. Answer 6, 10, and 12. Appellants additionally argue that neither Morrow nor Alcorn suggests extending the touch screen display substantially the entire width of the gaming machine front side. Appeal Br. 11. The Examiner finds in Morrow a teaching to provide a video display extending substantially the entire width of the front of the gaming machine and contends that the particular arrangement of the video displays on the front of the machine is an obvious matter of design choice, in that it does not effect or bring unexpected results to the outcome of the game. Answer 5 and 6.

Appellants argue that both Morrow and Alcorn show an area to the right of the center video display on the gaming machine front. Appeal Br. 12. Thus, according to Appellants, combination of Morrow and Alcorn would not result in a gaming machine having a center video display that extends substantially the entire width of the gaming machine, as called for in claim 16. Appeal Br. 13. The Examiner finds that each of the video displays, including center video display 50, of Morrow extends substantially the entire width of the front side of the gaming machine (Answer 4 and 13), and further contends that any difference in the particular arrangement of the video displays on the front of the gaming machine is simply an obvious matter of design choice, since orienting the displays differently does not effect or bring unexpected results to the outcome of the game (Answer 14).

Appellants additionally argue that Morrow does not teach or suggest producing a presentation switching instruction at least partially based on the utilization of a number of other gaming machines providing a second game presentation, as required in paragraph (b) of claim 16, or displaying the second game presentation at the gaming machine in response to the switching instruction, as required in paragraph (c) of claim 16. Appeal Br. 13-14. The Examiner finds that Morrow teaches or suggests such a switching arrangement in paragraphs 27 and 44-46. Answer 4-5 and 16-19.

Accordingly, the issues before us are:

- (1) Is the recitation of a player input or interface device in an area removed from the forwardly projecting edge in claims 5 and 27 consistent with the disclosed position of player interface devices 20 in Appellants' Specification and drawings?

- (2) Have Appellants demonstrated the Examiner erred in determining that the combined teachings of Morrow and Alcorn are sufficient to establish that it would have been obvious to a person of ordinary skill in the art to provide a touch screen user input video display on a forwardly projecting ledge or shelf, such as the ledge shown below the middle display area 50 in Figures 1 and 2 of Morrow, and extending substantially the entire width of the gaming machine front side?
- (3) Have Appellants demonstrated the limitation that the video displays extend substantially the entire width of the front of the gaming machine patentably distinguishes claim 16 over the combination of Morrow and Alcorn?
- (4) Have Appellants demonstrated the Examiner erred in finding that Morrow teaches or suggests the type of switching arrangement called for in paragraphs (b) and (c) of claim 16?

FACTS PERTINENT TO THE ISSUES

FF1 Appellants' gaming machine has a front surface 12 with a player control ledge 16. Specification 8:18-20; fig. 1. Appellants disclose player control or input buttons 19 mounted on ledge 16. Specification 9:15-16; fig. 1. Appellants also disclose additional player interface devices 20 located around the periphery of second additional video display 18 on a vertically extending front surface below the ledge 16. Specification 10:7-8; fig. 1. The additional player interface devices 20 are located in an area of the front surface of the gaming machine other than the ledge 16 at some distance from the ledge. Specification 10:7-8; fig. 1.

- FF2 A customary meaning of the term “removed” is “distant,” which in turn has a customary meaning of “having a gap or space between; separated.” *Webster's New World Dictionary* 409 and 1202 (David B. Guralnik ed., 2nd Coll. Ed., Simon & Schuster, Inc. 1984).
- FF3 Morrow’s gaming machine has a top display 30, a middle display 50 providing traditional game display, and a bottom display area 60. Morrow ¶¶ 20 and 21. Morrow shows in Figures 1 and 2 a forwardly projecting ledge below the middle display 50 and above the bottom display area 60. Morrow describes “[a] button deck for user input . . . arranged below the central screen 50.” Morrow ¶ 20. Morrow’s use of the term “deck”¹ connotes a shelf or forwardly projecting ledge on which the buttons are disposed.
- FF4 Morrow teaches that any number of screens may be used, any content may be displayed on any of the screens, and all displays may include touchscreen input from the user. Morrow ¶ 22.
- FF5 The terminology “touchscreen” is well understood by those of ordinary skill in the video gaming art to be a video screen or display adapted to accept user input by touching particular areas of the display. *See, e.g.*, Alcorn, col. 3, ll. 9-14 and 61-63. A touchscreen video display is therefore a well known user input or interface device that serves the same function as mechanical input buttons.
- FF6 Morrow does not explicitly teach a player control video display or touchscreen video display on a forwardly projecting ledge.

¹ A customary definition of “deck” is “any platform, floor, shelf, etc. suggestive of a ship’s deck.” *Webster's New World Dictionary* at 366.

FF7 Morrow's top video display area 30 is shown in Figures 1 and 2 extending substantially the entire width of the gaming machine front surface. While Morrow shows space to the right of the middle display area 50 in Figures 1 and 2, Morrow does not attribute any significance to any space on the front surface of the gaming machine to the left or right of the displays. Accordingly, Morrow does not appear to view any such illustrated space as being substantial or critical.

FF8 Alcorn teaches an electronic gaming machine comprising a display 16 with integrated touch screen and a series of "hard" buttons 40 arranged on a slightly protruding shelf 38 to provide user input. Alcorn, col. 3, ll. 7-14; col. 4, ll. 9-12; fig. 1.

FF9 Alcorn does not explicitly teach a touchscreen video display on the shelf 38. In particular, considering Alcorn's teachings at column 3, lines 7-9 and column 4, lines 9-12 and 16-17 as a whole together with the illustrations in Figures 1-3 of Alcorn, we find that Alcorn's reference at column 4, lines 15-16 to "a user interface 42 that includes the touch screen buttons 40 and pull handle 39" is not an explicit teaching of touch screen buttons on the shelf 38. Rather, as urged by Appellants on page 9 of their Appeal Brief, we find that this text refers to a touch screen and buttons 40.

FF10 Using Morrow's gaming system,
casino management can optimize play on the casino floor by rapidly reconfiguring games quickly and inexpensively. A casino can configure machines or the network to change games, paytables, minimum or maximum bets, and the like, at predetermined times, upon the occurrence of certain events, and/or the casino management

can do so spontaneously. A plurality of machines may be reconfigured substantially simultaneously or the casino may choose to reconfigure only a single machine. For example, a casino may want to replace the games, associated pay tables and artwork on a plurality of machines with a more popular game, associated pay tables and artwork.

Morrow ¶ 27.

FF11 The popularity of a game is determined by monitoring how many machines in the casino are being played with that game as compared with the number of machines that are being played with other games.

FF12 Morrow also teaches that the intranet embodiments of the system allow casino operators to “rapidly change the mix of the games on their floors with a minimum of time and effort.” Morrow ¶ 44.

PRINCIPLES OF LAW

The legal standard for definiteness is whether a claim reasonably apprises those of skill in the art of its scope. *See In re Warmerdam*, 33 F.3d 1354, 1361 (Fed. Cir. 1994).

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, ___, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3)

the level of ordinary skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at ___, 127 S. Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

While there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*, 550 U.S. at ___, 127 S. Ct. at 1741. While the requirement of demonstrating a teaching, suggestion, or motivation to combine known elements in order to show that the combination is obvious may be “a helpful insight,” it cannot be used as a rigid and mandatory formula. *Id.*

“[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *Id.*, 550 U.S. at ___, 127 S. Ct. at 1740.

ANALYSIS

The Indefiniteness Rejection

Appellants’ Specification and drawings describe one or more additional player interface devices 20 located in an area of the front surface of the gaming machine other than the forwardly projecting ledge 16 at some distance from the ledge. FF1. We therefore conclude that the recitation of at least one (or one or more) player input or interface device in an area

removed from the forwardly projecting ledge in claims 5 and 27 is consistent with the disclosed position of player interface devices 20 in Appellants' Specification and drawings. While Appellants might have selected terminology that might have been preferable to, or more precise than, "removed from" to describe the player input or interface devices 20 being on an area of the front side of the gaming machine that is not on the forwardly projecting ledge, the terminology selected is neither inconsistent with nor misdescriptive of Appellants' underlying disclosure. A person of ordinary skill in the art would be able to ascertain the scope of the claimed invention, and the recitation in question in particular. Specifically, such a person would understand the recitation in question to be a recitation of at least one user input or interface device located on the front side of the gaming machine in an area that is located at some distance, or separated, from the ledge. We do not sustain the rejection under 35 U.S.C. § 112, second paragraph.

The Obviousness Rejection

Claims 1, 2, 4-6, 9-13, 21, 23, 26, and 27

Appellants argue in favor of independent claims 1, 6, and 21, and their respective dependent claims, together as a group. Appeal Br. 8 and 11; Reply Br. 4. Therefore, in accordance with 37 C.F.R. § 41.37(c)(1)(vii) (2008), we select claim 21 as the representative claim to decide the appeal of the rejection as to this group, with claims 1, 2, 4-6, 9-13, 23, 26, and 27 standing or falling with claim 21.

As noted in our findings above, Morrow does not explicitly teach a player control video display forming at least a portion of a forwardly projecting ledge, as called for in claim 21. FF6. Morrow does, however,

illustrate a forwardly projecting ledge below the middle display 50 and above the bottom display area 60, and further describes a button deck for user input arranged below the central screen 50. FF3. Morrow's use of the term "deck" conveys that the user input buttons are disposed on a shelf or forwardly projecting ledge. *Id.* Furthermore, Alcorn establishes that it was known in the art at the time of Appellants' invention to provide an electronic gaming machine comprising a display 16 with a series of "hard" buttons 40 arranged on a slightly protruding shelf 38 to provide user input. FF8. Morrow and Alcorn therefore teach, or at least would have suggested, providing a player input device with user input buttons on the forwardly projecting ledge below the middle display 50 of Morrow's gaming machine.

Morrow further teaches that that any number of screens may be used, any content may be displayed on any of the screens, and all displays may include touchscreen input from the user. FF4. A touchscreen video display is a well known user input or interface device that serves the same function as mechanical input buttons. FF5. To provide the user input device on the forwardly projecting ledge or shelf of a gaming machine in the form of a touch screen, rather than mechanical buttons, would involve nothing more than the substitution of one element for another known in the field for performing the same function. Moreover, Appellants have not alleged, much less shown, that such a substitution would have yielded unpredictable or unexpected results. Consequently, we find no error in the Examiner's determination that the combined teachings of Morrow and Alcorn establish that it would have been obvious to provide a touch screen video display, or player control video display, on the forwardly projecting ledge or shelf of a

gaming machine, such as the ledge below the middle video display 50 of Morrow.

As for Appellants' argument on page 11 of the Appeal Brief that nothing in either Morrow or Alcorn teaches that the display extend substantially the entire width of the gaming machine front side, claim 21 does not require the player control video display to extend substantially the entire width of the gaming machine front side. Appellants' argument thus does not demonstrate error in the Examiner's rejection of claim 21. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (Limitations not appearing in the claims cannot be relied upon for patentability.) Morrow's top video display area 30 is shown in Figures 1 and 2 extending substantially the entire width of the gaming machine front surface. FF7. Morrow thus satisfies the limitation in paragraph (d) of claim 21 that a first additional video display (top video display area 3) located at the front side of the cabinet above the game video display (middle display area 50) extend substantially the entire width of a front side of the gaming machine.

Moreover, while Morrow shows space to the right of the middle display area 50 in Figures 1 and 2, Morrow does not attribute any significance to any space on the front surface of the gaming machine to the left or right of the displays. FF7. Accordingly, Morrow does not appear to view any such illustrated space as being substantial or critical. *Id.* We thus find that Morrow shows all of the video displays extending substantially the entire width of the gaming machine front side and thus would have suggested having the touch screen or player control video display located on the forwardly projecting ledge or shelf extend substantially the entire width as well. In any event, to the extent that Morrow would not be considered to

teach or suggest video displays extending substantially the entire width of the gaming machine front side, Appellants have not alleged, much less shown, that to so extend any or all of the video displays of Morrow would be beyond the technical grasp of a person of ordinary skill in the art or produce unexpected or unpredictable results. We agree with the Examiner that the particular arrangement of the video displays of a gaming machine is merely an obvious matter of design choice.

For all of the above reasons, Appellants' arguments fail to convince us of error in the rejection of representative claim 21, or claims 1, 2, 4-6, 9-13, 23, 26, and 27 that stand or fall with claim 21. We sustain the rejection of these claims under 35 U.S.C. § 103(a).

Claim 14

Appellants argue on pages 11 and 12 of the Appeal Brief that Morrow and Alcorn do not teach or suggest a video display device forming a portion of a ledge projecting from a plane of an additional video display and thus cannot teach or suggest the limitations of paragraph (c) of claim 14. This argument is unpersuasive for the reasons discussed above with respect to claim 21. We sustain the rejection of claim 14 under 35 U.S.C. § 103(a).

Claims 16-20

Appellants do not present any separate arguments for the patentability of claims 17-20 apart from independent claim 16 from which they depend. Therefore, claims 17-20 stand or fall with representative claim 16 in accordance with 37 C.F.R. § 41.37(c)(1)(vii).

As discussed above with respect to claim 21, we find that Morrow shows all of the video displays extending substantially the entire width of the gaming machine front side and thus would have suggested having the

touch screen or player control video display located on the forwardly projecting ledge or shelf extend substantially the entire width as well. In any event, to the extent that Morrow would not be considered to teach or suggest video displays extending substantially the entire width of the gaming machine front side, Appellants have not alleged, much less shown, that to so extend any or all of the video displays of Morrow would be beyond the technical grasp of a person of ordinary skill in the art or produce unexpected or unpredictable results. We agree with the Examiner that the particular arrangement of the video displays of a gaming machine is merely an obvious matter of design choice. Accordingly, Appellants have not demonstrated the limitation that the video displays extend substantially the entire width of the front of the gaming machine patentably distinguishes claim 16 over the combination of Morrow and Alcorn.

Morrow teaches configuring the gaming system to change games, pay tables, minimum or maximum bets, and the like, at predetermined times, upon the occurrence of certain events. A plurality of machines may be reconfigured substantially simultaneously or the casino may choose to reconfigure only a single machine. For example, a casino may want to replace the games, associated pay tables and artwork on a plurality of machines with a more popular game, associated pay tables and artwork. FF10. The popularity of a game is determined by monitoring how many machines in the casino are being played with that game as compared with the number of machines that are being played with other games. FF11. Morrow also teaches that the intranet embodiments of the system allow casino operators to “rapidly change the mix of the games on their floors with a minimum of time and effort.” FF12. These teachings are at least

suggestive of a switching arrangement wherein additional gaming machines on the gaming system are monitored to determine which games are the most popular during any given time and switching the game presentation of the video displays of a gaming machine presenting a less popular game to the game presentation of other gaming machines presenting the game determined to be more popular. Such a switching arrangement satisfies the requirements of paragraphs (b) and (c) of claim 16.

For the above reasons, Appellants' arguments fail to persuade us the Examiner erred in rejecting claim 16. We sustain the rejection of claim 16 and claims 17-20 standing or falling with claim 16.

CONCLUSIONS OF LAW

- (1) The recitation of a player input or interface device in an area removed from the forwardly projecting edge in claims 5 and 27 is consistent with the disclosed position of player interface devices 20 in Appellants' Specification and drawings.
- (2) Appellants have not demonstrated the Examiner erred in determining that the combined teachings of Morrow and Alcorn are sufficient to establish that it would have been obvious to a person of ordinary skill in the art to provide a touch screen user input video display on a forwardly projecting ledge or shelf, such as the ledge shown below the middle display area 50 in Figures 1 and 2 of Morrow, and extending substantially the entire width of the gaming machine front side.
- (3) Appellants have not demonstrated the limitation that the video displays extend substantially the entire width of the front of the

gaming machine patentably distinguishes claim 16 over the combination of Morrow and Alcorn.

- (4) Appellants have not demonstrated the Examiner erred in finding that Morrow teaches or suggests the type of switching arrangement called for in paragraphs (b) and (c) of claim 16.

In light of the above, we reverse the rejection of claims 5 and 27 under 35 U.S.C. § 112, second paragraph, but we sustain the rejection of claims 1, 2, 4-6, 9-14, 16-21, 23, 26, and 27 under 35 U.S.C. § 103(a).

DECISION

The Examiner's decision is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2008).

AFFIRMED

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